

Councilmember Sherri Lightner's statement regarding the Children's Pool
City Council Meeting
June 9, 2009

Personal History

- I have been aware of and participated in various aspects of the Children's Pool issue for over ten years.
- I had no idea it would come to dog me in the press as it has.
- I have heard dog jokes and songs from "Who Let the Dogs Out" to Three Dog Night's collection.
- I have also heard proposed solutions that range from the innovative to what some have considered the absurd.
- Over the long history of this issue, there have been several City Attorney opinions and legal strategies. And today, we have a new City Attorney leading another legal approach and even editorializing in the *Union Tribune*.

Guiding Principles

- As we move forward, it will be helpful to acknowledge that people from many different viewpoints care deeply about this emotionally-charged issue.
- I am requesting that the City move forward with a few guiding principles:
 - Respect all ideas
 - Be transparent about how ideas are vetted
 - Be accountable through public participation
 - Respond to every idea from two perspectives:
 - a. Reasons why the idea can or cannot work, and
 - b. What it would take to implement the idea.
- I believe open, fair and thorough consideration of all ideas increases the possibility of achieving community understanding about how the ideas were evaluated, identifying the best solutions, and increasing community acceptance of the eventual plan.
- The City must develop a plan that:

- a. Complies with all state and federal court orders regarding the status of the Children's Pool;
 - b. Complies with all National Oceanic and Atmospheric Administration (NOAA) regulations and with the Marine Mammal Protection Act;
 - c. Complies with or exceeds the legal requirements for the protection and safety of both humans and marine mammals while minimizing the public safety, traffic and other impacts on surrounding residents and businesses;
 - d. Takes advantage of seals leaving the beach and dissuades them from returning.
- I hope that the Mayor will adopt this approach so that any plan, whether a dispersal plan, summer management plan or marine mammal park plan, will be vetted in the light of public review and be successful with the courts, unlike the recent dispersal plan which has just been seen by the public and has not as yet been accepted by the Superior Court.
 - I request that future requests for information or evaluation of ideas be honored by being vetted in a manner similar to what I am suggesting.
 - Rather than being honored in this way, my inquiry about whether or not, and under what conditions, dogs would be permitted on the beach was considered from a limited, narrow, and predisposed point of view, and incorrectly described as "Lightner's proposal for a dog beach," leaving those who originally asked about dogs being allowed on the beach with the view that the idea was not objectively considered.
 - The City Attorney's vetting of this idea was to propose what amounted to a dog park on the beach to NOAA. It is no surprise that this proposal was not acceptable.

My Position

- I believe that if the City had followed the "right" and legal course from the outset, we would not be where we are today.
- I find it ironic that we have come full circle with this situation.
- It started out as a clean water issue, and now the City is being sued about Clean Water Act violations caused by the Mayor's seal dispersal plan, and yet we still have a problem with contamination.

- My position has always been to honor the Tidelands Trust and to allow co-existence of people and seals at Children's Pool in a way that works for everyone.
- Now, because of the new state legislation being proposed and the recent court rulings, it might be time for everyone to rethink their position. To help with that, I am offering the following plan:

My Plan

1. Gather all the facts we can, from as many sources as we can.
2. Include the public in every move we make. This is a public beach.
 - That is why I conducted a community forum and invited the Mayor's office to attend.
 - SDPD attended the forum, and we were able to answer questions about public safety for the Children's Pool and the surrounding neighborhood.
 - It was helpful to get everyone on the same page about what the rules are and how they are enforced.
 - It was comforting for the community to understand that the police have a protocol for incidents and increased activity at the Children's Pool.
 - Moving forward we will have additional forums about a summer management plans, and a possible marine mammal park.
3. Evaluate all ideas according to the standards I have suggested today.
4. Make a reasonable and legally supportable decision that is proactive in dealing with the growing seal population and its potential effects on all of our beaches.

Many Questions Remain

A sampling are:

1. How will the City's plan for the Children's Pool affect other beaches when the increasing seal population begins to inhabit other beaches?
2. If Children's Pool is made into a seal sanctuary, and seals begin to populate other beaches, will those beaches be closed to people too?
3. If seals are dispersed from Children's Pool, and they begin to populate other city beaches, will they be dispersed in the same manner?

4. What is the increased probability of sharks due to the higher resident seal population?
5. Will the Mayor provide a report for public review and consideration that compares all proposals/ideas according to 1) cost; 2) effectiveness; and 3) safety for both people and seals?
6. What opportunities will the public have to give input?
7. Is it possible to implement a plan that results in no fiscal impact to the City? (The legislation currently moving through the state legislature passed the senate overwhelmingly in part because it claimed to result in no fiscal impact to the state.)
8. Is enforcement of the Marine Mammal Protection Act the responsibility (including financial responsibility) of the City?
9. Can the City work with normal seal behavior, so that they are not forced to leave, but rather they are dissuaded from returning, without cost to taxpayers?
10. How much does the public safety (SDPD) coverage at Children's Pool cost the City of San Diego?
11. How much has the litigation cost the City of San Diego?
12. Can the area be given to the State to manage—especially with the legislative change?
13. How would this work—in terms of enforcement, considering the State's threats to close Torrey Pines State Park?
14. Is there any validity to claims that there may be food chain damage in the Ecological Preserve?
15. Since seals are not endangered and the population is growing,
 - a. Under what circumstances do they become a nuisance?
 - b. The seal population has grown 300 fold over the last 100 years. What will the growth be in the future?
16. Do the seals need the Children's Pool location to survive and thrive?
17. What are the seals' natural predators?
18. Do the lifeguards have a shark protocol? Are they developing one?
19. Is it reasonable to be concerned about the shark attractant possibility?

Conclusion

- Children's Pool is an opportunity for San Diegans to come together, understand divergent points of view, share concerns, and find the best solution after all concerns have been balanced.
- This issue has a long history and has been worked on in many ways over the years.
- Today I have suggested guidelines and a standard that I believe will help to set a more productive course.
- I am calling on my Council colleagues and the Mayor to begin pursuing a solution based on greater community participation and more thorough analysis and consideration of all ideas.
- I believe that by following the course of open, fair and thorough consideration of all ideas, the community will be in a better position to understand how the ideas were evaluated, help identify the best ideas, and be more likely to accept and comply with the eventual solution.